

SECTION I

CONTRACT CLAUSES

(NONAPPROPRIATED FUND CONSTRUCTION, ALTERATION AND REPAIR CONTRACTS)

- I-1 Definitions
- I-2 Nonappropriated Fund Instrumentality
- I-3 Covenant Against Contingent Fees
- I-4 Changes--Construction
- I-5 Subcontractors And Outside Associates And Consultants
- I-6 Subcontracts For Commercial Items And Commercial Components
- I-7 Officials Not To Benefit
- I-8 Gratuities
- I-9 Material And Workmanship
- I-10 Compliance With Copeland Act Requirements
- I-11 Examination Of Records
- I-12 Convict Labor
- I-13 Contract Work Hours And Safety Standards Act-Overtime Compensation (Applicable to construction contracts of \$2,000 or more)
- I-14 Equal Opportunity
- I-15 Prohibition Of Segregated Facilities
- I-16 Affirmative Action For Workers With Disabilities
- I-17 Not Used
- I-18 Restrictions On Certain Foreign Purchases
- I-19 Insurance Work On A Government Installation
- I-20 Taxes
- I-21 Extras
- I-22 Prompt Payment For Construction Contracts
- I-23 Affirmative Action Compliance Requirements For Construction
- I-24 Assignment Of Claims
- I-25 Nonwaiver Of Defaults
- I-26 Disputes
- I-27 Property Records
- I-28 NAFI Property
- I-29 Commerical Warranty
- I-30 Protecting The Nafi's Interest When Subcontracting With Contractors Debarred, Suspended Or Proposed For Debarment

- I-31 Clauses Incorporated By Reference
- I-32 Termination For Convenience
- I-33 Default (Fixed-Price Construction)
- I-34 Warranty Of Construction
- I-35 Accident Prevention, Fire Protection, And Sanitation
- I-36 Modification Proposals-Price Breakdown
- I-37 Payment By Third Party
- I-38 Permits And Responsibilities
- I-39 Removal Of Contractor's Employees
- I-40 Save Harmless
- I-41 Compliance With Davis-Bacon And Related Act Regulations
- I-42 Disputes Concerning Labor Standards
- I-43 Contract Termination-Debarment
- I-44 Differing Site Conditions
- I-45 Site Investigation And Conditions Affecting The Work
- I-46 Operations And Storage Areas
- I-47 Cleaning Up
- I-48 Suspension Of Work
- I-49 Other Contracts
- I-50 Notice To The Nafi Of Labor Disputes
- I-51 Identification Of Contractor's Employees
- I-52 Schedules For Construction Contracts
- I-53 Protection Of Existing Vegetation, Structures, Equipment, Utilities, And Improvements
- I-54 Time Extensions
- I-55 Inconsistency Between English Version And Translation Of Contract
- I-56 Commencement, Prosecution, And Completion Of Work
- I-57 Clean Air And Water (Applicable to contracts in excess of \$100,000)
- I-58 Composition Of Contractor
- I-59 Superintendence By Contractor
- I-60 Use And Possession Prior To Completion
- I-61 Availability And Use Of Utility Services
- I-62 Apprentices And Trainees
- I-63 Payrolls And Basic Records
- I-64 Specifications And Drawings For Construction
- I-65 Layout Of Work
- I-66 Davis-Bacon Act
- I-67 Withholding Of Funds

- I-68 Subcontracts (Labor Standards)
- I-69 Labor Standards For Construction Work--Facilities Contracts
- I-70 Anti-Kickback Procedures
- I-71 Performance And Payment Bonds
- I-72 Reserved
- I-73 Stop-Work Order
- I-74 Payments Under Fixed-Price Construction Contracts
- I-75 Preconstruction Conference
- I-76 Bankruptcy
- I-77 Contracting Officer Authority
- I-78 Order Of Precedence
- I-79 Not Used
- I-80 Not Used
- I-81 Not Used
- I-82 Not Used
- I-83 Privacy Act Notification
- I-84 Privacy Act

I-1 DEFINITIONS

- A. "Head of the agency" (also called "agency head") or "Secretary" means the Secretary of the Navy, the Under Secretary, and the term "authorized representative" means any person or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.
- B. "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality that is a party to this contract and make related determinations and findings.
- C. "Commercial Item" means a product or a service (e.g., items, supplies, materials, components) sold or traded to the general public in the course of conducting normal business operations at established catalog or market prices.
- D. Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

I-2 NONAPPROPRIATED FUND INSTRUMENTALITY:

The Non Appropriated Fund Instrumentality (NAFI) that is party to this contract is a nonappropriated fund instrumentality of the Department of the Navy. No appropriated funds of the United States shall become due or be paid the contractor by reason of this contract. This contract is NOT subject to the Contract Disputes Act of 1978. References to the United States, the Government and other related references will generally be implied to mean the NAFI throughout this contract.

I-3 COVENANT AGAINST CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to void this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4 CHANGES -- CONSTRUCTION

- A. The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the general scope of this contract including changes-
 - 1. In the specifications (including drawings and designs);
 - 2. In the method or manner of performance of the work;
 - 3. In the NAFI-furnished property or services; or
 - 4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer a timely written notice expressly stating (1) the date, circumstances, and source of the order and (2) a clear and unambiguous statement that the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.
- D. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required above. In the case of defective specifications for which the NAFI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- E. The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the NAFI. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

- F. No proposal by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

The preceding paragraphs do not apply to contracts for architect-engineer or other professional services. In all contracts for architect-engineer or other professional services, the following paragraphs apply:

- G. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.
- H. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

I-5 SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS:

Any subcontractors and outside associates or consultants utilized by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified in proposals or agreed to during negotiations. Any substitution of such contractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

I-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

- A. Definitions. As used in this clause –

“Commercial item” has the meaning contained in the clause Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.

- B. To the maximum extent practicable, the contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items as components of items to be supplied under this contract.
- C. Notwithstanding any other clause of this contract, the contractor is not required to include any provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components.

1. Equal Opportunity (EO 11246);

2. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a)); and
 3. Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- D. The contractor shall include the terms of this clause, including this paragraph (d), in subcontractors awarded under this contract.

I-7 OFFICIALS NOT TO BENEFIT:

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-8 GRATUITIES

- A. The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
1. Offered or gave a gratuity (e.g., entertainment or gift) to an officer, official, or employee of the United States or the NAFI; and
 2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- B. If this contract is terminated under paragraph (a) above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.
- C. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-9 MATERIAL AND WORKMANSHIP

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any

equipment, material, articles, or processes that, in the judgment of the Contracting Officer, are equal to that named in the specifications, unless otherwise specifically provided in this contract.

- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles that the Contractor contemplates incorporating in the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor removes from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

I-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS:

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I-11 EXAMINATION OF RECORDS

- A. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.
- B. The Contractor agrees to include the clause in (a) above, in all subcontracts.

I-12 CONVICT LABOR

- A. Except as provided in paragraph (b) of this clause, the contractor shall not employ in the performance of this contract any person undergoing a sentence of

imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

- B. The contractor is not prohibited from employing persons -
1. On parole or probation to work at paid employment during the term of their sentence;
 2. Who have been pardoned or who have served their terms; or
 3. Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if -
 - a. The worker is paid or is in an approved work-training program on a voluntary basis;
 - b. Representatives of local union central bodies or similar labor union organizations have been consulted;
 - c. Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - d. The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - e. The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**I-13 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME
COMPENSATION (Applicable to construction contracts of \$2,000 or more)**

- A. Overtime requirements. No Contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any work week unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

- B. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the NAFI. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.
- C. Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other NAF contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- D. Payrolls and basic records.
 - 1. The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the NAFI until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - 2. The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph "D.1" of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- E. Subcontracts. The Contractor shall insert the provisions set forth in paragraphs "A" through "D" of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs "A" through "D" of this clause.

I-14 EQUAL OPPORTUNITY

A. *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

B. 1. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

2. If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

C. 1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to-

- a. Employment;
- b. Upgrading;
- c. Demotion;
- d. Transfer;
- e. Recruitment or recruitment advertising;
- f. Layoff or termination;
- g. Rates of pay or other forms of compensation; and
- h. Selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
5. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
8. The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the NAFL to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under

the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 11. The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- D. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I-15 PROHIBITION OF SEGREGATED FACILITIES

- A. "Segregated facilities", as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.
- B. The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.
- C. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I-16 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

A. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -
 - a. Recruitment, advertising, and job application procedures;
 - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - c. Rates of pay or any other form of compensation and changes in compensation;
 - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - e. Leaves of absence, sick leave, or any other leave;
 - f. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - g. Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - h. Activities sponsored by the Contractor, including social or recreational programs; and;
 - i. Any other term, condition, or privilege of employment.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

B. Postings.

1. The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and (ii) the rights of applicants and employees.
2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
3. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

C. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

D. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I-17 NOT USED

I-18 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- A. The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control,

Department of Treasury. Those countries include Cuba, Iran, Iraq, Libya and North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

- B. The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
- C. The Contractor shall insert this clause, including this paragraph (c), in all subcontracts hereunder.

I-19 INSURANCE WORK ON A GOVERNMENT INSTALLATION

- A. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract. In no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.
- B. Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the State in which the contract is to be performed prescribed at (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- C. The Contractor shall insert the substance of this clause, including this paragraph "C", in subcontracts under this contract that require work on a Government installation or Government-controlled property and shall require subcontractors to provide and maintain the insurance required in this Schedule or elsewhere in the contract. The contractor shall maintain a copy of all subcontractors' proof of required insurance, and shall make copies available to the Contracting Officer upon request.

I-20 TAXES

- A. Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except any tax, duty or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf; or any tax, duty, or other public charge from which the Contractor, or

any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

- B. If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.
- C. No adjustment of less than \$500 shall be made in the contract price pursuant to this clause.
- D. With respect to foreign taxes, NAFI's located in foreign countries will not pay to nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

I-21 EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless the Contracting Officer has authorized such extras and the price is in writing.

I-22 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS

- A. Notwithstanding any other payment terms in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph "A.3" concerning payments due on Saturdays, Sundays, and legal holidays).
- 1. Invoice Payments. - Types of invoice payments. For purposes of this clause, there are several types of invoice payments, which may occur under this contract, as follows:
 - a. Progress payments, if provided for elsewhere in this contract and not more frequently than monthly, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

- C. Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:
1. Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.
 2. Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause-
 - a. For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
 - b. Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) (otherwise CDA does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
 3. Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs "C.1" and "C.2" of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- D. Subcontract clause interpretation. The clauses required by paragraph "C" of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that-
1. Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;
 2. Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

3. Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--
 - a. A notice conforming to the standards of paragraph "G" of this clause previously has been furnished to the subcontractor; and
 - b. A copy of any notice issued by a Contractor pursuant to subdivision "D.3.a" of this clause has been furnished to the Contracting Officer.
- E. Subcontractor withholding procedures. If a Contractor, after making a request for payment to the NAFI but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--
 1. Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph "G" of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;
 2. Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph "E.1" of this clause;
 3. Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph "E.1" of this clause;
 4. Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--
 - a. Make such payment within--
 - (1) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefore must be recovered from the NAFI because of a reduction under subdivision "E.5.a" of this clause; or
 - (2) Seven days after the Contractor recovers such funds from the NAFI; or

- b. Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise the CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty;
 - 5. Notice to Contracting Officer. Notify the Contracting Officer upon-
 - a. Reduction of the amount of any subsequent certified application for payment; or
 - b. Payment to the subcontractor of any withheld amounts of a progress payment, specifying-
 - (1) The amounts withheld under subparagraph "E.1" of this clause; and
 - (2) The dates that such withholding began and ended; and
 - 6. Interest to NAFI. Be obligated to pay to the NAFI an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the NAFI until-
 - a. The day the identified subcontractor performance deficiency is corrected; or
 - b. The date that any subsequent payment is reduced under subdivision "E.5.a" of this clause.
- F. Third-party deficiency reports-
 - 1. Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph "E.6" of this clause-

- a. Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph "G" of this clause as soon as practicable upon making such determination; and
 - b. Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision "F.1.a" of this clause.
 2. Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall-
 - a. Pay the amount withheld under subdivision "F.1.b" of this clause to such first-tier subcontractor; or
 - b. Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
- G. Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying-
 1. The amount to be withheld;
 2. The specific causes for the withholding under the terms of the subcontract; and
 3. The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.
- H. Subcontractor payment entitlement. The Contractor may not request payment from the NAFI of any amount withheld or retained in accordance with paragraph "D" of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.
- I. Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late

payment interest penalty under a clause included in the subcontract pursuant to paragraph "C" of this clause does not constitute a dispute to which the NAFI is a party. The NAFI may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

- J. Preservation of prime-subcontractor rights. Except as provided in paragraph "I" of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.
- K. Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph "C" of this clause shall not be construed to be an obligation of the NAFI for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

I-23 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

- A. Definitions. As used in this clause-
 - 1. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.
 - 2. "Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.
 - 3. "Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
 - 4. "Minority," as used in this clause, means-
 - a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
 - b. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

- c. Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and \
 - d. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- B. If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- C. If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- D. The Contractor shall implement the affirmative action procedures in subparagraphs "G.1 - 16" of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- E. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to

employ the apprentices and trainee at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- G. The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
1. Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 2. Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 3. Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
 4. Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the

Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph "G.2" above.

6. Disseminate the Contractor's equal employment policy by
 - a. Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
 - b. Including the policy in any policy manual and in collective bargaining agreements;
 - c. Publicizing the policy in the company newspaper, annual report, etc;
 - d. Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - e. Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
7. Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
8. Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
9. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
 11. Validate all tests and other selection requirements where required.
 12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
 13. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
 14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 15. Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- H. The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs "G.1 - G.16". The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs "G.1 - G.16", provided the Contractor-
1. Actively participates in the group;
 2. Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 3. Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

4. Makes a good-faith effort to meet its individual goals and timetables; and
 5. Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
 - J. The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - K. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
 - L. The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
 - M. The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
 - N. The Contractor shall designate a responsible official to-
 1. Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 2. Submit reports as may be required by the Government/NAFI; and
 3. Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee

identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

- O. Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

I-24 ASSIGNMENT OF CLAIMS:

The contractor cannot assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-25 NONWAIVER OF DEFAULTS:

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

I-26 DISPUTES

- A. This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Navy for NAFI contracting.
- B. The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).
- C. All disputes arising under or relating to this contract shall be resolved under this clause.
- D. "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract forms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract

clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- E.
 - 1. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.
 - 2. For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that-
 - a. The claim is made in good faith;
 - b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
 - c. The amount requested accurately reflects the contract adjustment for which the contractor believes the NAFI is liable.
 - 3.
 - a. If the Contractor is an individual, the certification shall be executed by that individual.
 - b. If the Contractor is not an individual, the certification shall be executed by-
 - (1) A senior company official in charge at the Contractor's plant or location involved, or
 - (2) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
- F. For contract claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- G. The Contracting Officer's decision shall be final unless the contractor appeals as provided in paragraph "H" of this clause.
- H. The Contracting Officer's final decision on claims may be appealed by submitting a written appeal to Commander, Navy Installations Command (CNIC), within 90

days of receipt of the Contracting Officer's final decision. Decisions of the Commander, Navy Installations Command are final and are not subject to further appeal.

- I. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-27 PROPERTY RECORDS:

The NAFI shall maintain the NAFI's official property records in connection with NAFI property under this contract. Deleting the requirement for the contractor to maintain such records hereby modifies the clause NAFI Property.

I-28 NAFI PROPERTY

- A. The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.
- B. Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.
- C. If property is received in a less than functional state or in a time frame which would delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any, caused by the NAFI, and the Contracting Officer shall make an equitable adjustment in accordance with paragraph "D".
- D. The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make an equitable adjustment from such expenses incurred by the contractor.
- E. After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.
- F. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an

equitable adjustment in favor of the NAFI. The right to any equitable adjustment shall be the Contractor's exclusive remedy. The NAFI shall not be liable for breach of contract for--

1. Any delay in delivery of NAFI furnished property;
2. Delivery of NAFI furnished property in a condition not suitable for its intended use,
3. A decrease in or substitution of NAFI furnished property; or
4. Failure to repair or replace NAFI property for which the NAFI is responsible.

I-29 COMMERCIAL WARRANTY:

The contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the NAFI by any other clause of this contract.

I-30 PROTECTING THE NAFI'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT

- A. The Government suspends or debar Contractors to protect the Government/NAFI's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- B. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- C. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see <https://www.epls.gov> for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:
 1. The name of the subcontractor.

2. The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
3. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
4. The systems and procedures the Contractor has established to ensure that it is fully protecting the NAFI's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I-31 CLAUSES INCORPORATED BY REFERENCE:

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Full text is available upon request.

I-32 TERMINATION FOR CONVENIENCE:

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI in accordance with CNICINST 7043.1B. In the event of such termination, the contractor shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work on the terminated portion(s) of the contract. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

I-33 DEFAULT (FIXED-PRICE CONSTRUCTION)

- A. If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the NAFI may, by written notice to the Contractor, terminate the right to proceed with the work or the separable part of the work that has been delayed. In this event, the NAFI may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the NAFI resulting from the Contractor's refusal or failure to

complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the NAFI in completing the work.

- B. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if:
 - 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the NAFI and /or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the NAFI or with the government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and
 - 2. The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- C. If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for convenience of the NAFI.
- D. The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-34 WARRANTY OF CONSTRUCTION

- A. In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph "J" of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

- B. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the NAFI takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the NAFI takes possession.
- C. The Contractor shall remedy at the Contractor's expense any damage to NAFI or Government owned or controlled real or personal property, when that damage is the result of--
 - 1. The Contractor's failure to conform to contract requirements; or
 - 2. Any defect of equipment, material, or workmanship.
- D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the NAFI shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--
 - 1. Obtain all warranties that would be given in normal commercial practice;
 - 2. Require all warranties to be executed, in writing, for the benefit of the NAFI if directed by the Contracting Officer; and
 - 3. Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of

material or design furnished by the NAFI nor for the repair of any damage that results from any defects, gross mistakes, or fraud.

- J. This warranty shall not limit the NAFI's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

I-35 ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION:

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents.

I-36 MODIFICATION PROPOSALS-PRICE BREAKDOWN:

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit any analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, the justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

I-37 PAYMENT BY THIRD PARTY

- A. General. The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the NAFI, in accordance with the terms of this clause. The third party and, if applicable, the particular Government-wide commercial credit card to be used are identified elsewhere in this contract.
- B. Contractor payment request. In accordance with the clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the NAFI account with the third party, at the time and for the amount due in accordance with the terms of this contract.

- C. **Payment.** The Contractor and the third party shall agree that all payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the NAFI and are not subject to the Prompt Payment Act or any implementation thereof in this contract.
- D. **Documentation.** Documentation of each charge against the NAFI's account shall be provided to the Contracting Officer upon request.
- E. **Assignment of claims.** Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.
- F. **Other payment terms.** The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, which is not provided in the third party agreement referenced in paragraph "C" of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

I-38 PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the NAFI, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

I-39 REMOVAL OF CONTRACTOR'S EMPLOYEES

The Contractor agrees to utilize only experienced, responsive and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

I-40 SAVE HARMLESS

The Contractor shall save indemnify, save harmless and defend the NAF, its outlets and customer from any liability, claimed or established for violation or infringement of any copyright or trademark right asserted by a third party with respect to goods hereby ordered or any part thereof. Also the contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits and expenses which rise out of acts or omissions of the contractor, its agents, or employees.

I-41 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I-42 DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6 and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or employees or their representatives.

I-43 CONTRACT TERMINATION-DEBARMENT

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract and for debarment as a Contractor and subcontractor.

I-44 DIFFERING SITE CONDITIONS

- A. The contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

- B. The Contracting Officer shall investigate the site conditions, promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- C. No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in "A" above for giving written notice may be extended by the Contracting Officer.
- D. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

I-45 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the NAFI, as well as from drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the NAFI.
- B. The NAFI assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the NAFI. Nor does the NAFI assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers, employees, or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

I-46 OPERATIONS AND STORAGE AREAS

- A. The Contractor shall confine all operations (including storage of materials) on NAFI or Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government and the NAFI, its officers, employees, and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- B. Temporary buildings (e.g., storage sheds, shops, offices, etc.) and utilities may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the NAFI. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the contractor at the contractor's expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- C. The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

I-47 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the NAFI or the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

I-48 SUSPENSION OF WORK

- A. The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act

within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- C. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of the final payment under the contract.

I-49 OTHER CONTRACTS

The NAFI or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with NAFI and Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by NAFI or Government employees.

I-50 NOTICE TO THE NAFI OF LABOR DISPUTES

- A. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.
- B. The Contractor agrees to insert the substance of this clause, including this paragraph "B", in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

I-51 IDENTIFICATION OF CONTRACTOR'S EMPLOYEES

- A. The Contractor without expense to the NAFI shall provide for each employee, working on this contract, an identification badge as may be approved and directed by the Contracting Officer. Each such employee shall be required to wear his badge upon his person at all times while on duty at the site of work or at other times and places where identification is required, and in such manner that it will be plainly visible as a means of identification. If required by the Contracting Officer, the Contractor shall obtain fingerprints and other means of identification for all such employees.
- B. In the event the NAFI desires registration of all employees working on this project, the Contractor shall cause them to be registered at such place and in such manner as the Contracting Officer may direct. Upon notification that registration is to be affected, the Contractor shall not permit any employee to work on the job site until such employee has completed the required registration.

I-52 SCHEDULES FOR CONSTRUCTION CONTRACTS

- A. The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work schedules for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- B. The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take such steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the NAFI. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of the construction plan, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the contract.

I-53 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

I-54 TIME EXTENSIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

I-55 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

I-56 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

The Contractor will be required to (a) commence work under this contract within seven calendar days (unless otherwise specified within this contract) after the date of receipt by him of notice to proceed, (b) to prosecute work diligently, and (c) to complete the entire work, ready for use not later than the time specified in the terms of the contract. The time stated for completion shall include final clean up of the premises.

I-57 CLEAN AIR AND WATER (Applicable to contracts in excess of \$100,000)

A. "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

1. "Clean air standards," as used in this clause, means--

- a. Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- b. An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- c. An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- d. An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

2. "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharge by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

3. "Compliance," as used in this clause, means compliance with--

- a. Clean air or water standards; or
 - b. A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.
4. "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.
 5. "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

B. The Contractor agrees--

1. To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
2. That no portion of the work required by this prime contract Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
3. To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
4. To insert the substance of this clause into any nonexempt subcontract, including this subparagraph "B.4".

I-58 COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

I-59 SUPERINTENDENCE BY CONTRACTOR

At all times during the performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

I-60 USE AND POSSESSION PRIOR TO COMPLETION

- A. The NAFI or the Government shall have the right to take possession of any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the NAFI or the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall relieve the Contractor of responsibility for complying with the terms of the contract. The NAFI's or the Government's possession or use shall not be deemed an acceptance of any work under the contract.
- B. While the NAFI or the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the NAFI's or the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the NAFI or the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

I-61 AVAILABILITY AND USE OF UTILITY SERVICES

- A. The Government/NAFI shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government/NAFI or, where the Government/NAFI, at reasonable rates determined by the Contracting Officer, produces the utility. The Contractor shall carefully conserve any utilities furnished without charge.
- B. The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.

- C. Before final acceptance of the work by the Government/NAFI, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

I-62 APPRENTICES AND TRAINEES

A. Apprentices.

1. An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed-
 - a. Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
 - b. In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
2. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
3. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
4. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

5. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
6. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Trainees.

1. Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
2. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

3. In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- C. *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended.

I-63 PAYROLLS AND BASIC RECORDS

- A. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- B.
 1. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--
 - a. That the payroll for the payroll period contains the information required to be maintained under paragraph "A" of this clause and that such information is accurate and complete;
 - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions; and
 - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph "B.2" of this clause.
 4. The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- C. The Contractor or subcontractor shall make the records required under paragraph "A" of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

I-64 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- A. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B. Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- C. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- D. Shop drawings means drawings, submitted to the Government/NAFI by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government/NAFI may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- E. If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission.

The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government/NAFI's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with "F" below.

- F. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- G. The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. The Contracting Officer will retain three sets (unless otherwise indicated) of all shop drawings and return the other set to the Contractor.
- H. This clause shall be included in all subcontracts at any tier.

I-65 LAYOUT OF WORK

The Contractor shall layout its work from established base lines and benchmarks indicated on the drawings furnished by the NAFI, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

I-66 DAVIS-BACON ACT

- A. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR

Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph "D" of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph "B" of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- B. 1. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
- a. The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - b. The classification is utilized in the area by the construction industry.
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - d. With respect to helpers, such a classification prevails in the area in which the work is performed.

2. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 3. In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 4. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs "B.2 and B.3" of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- C. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- D. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I-67 WITHHOLDING OF FUNDS

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I-68 SUBCONTRACTS (LABOR STANDARDS)

- A. The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- B.
 - 1. Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph "A" of this clause have been included in the subcontract.
 - 2. Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

**I-69 LABOR STANDARDS FOR CONSTRUCTION WORK--FACILITIES
CONTRACTS**

- A. In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses in performance of such work: (1) Contract Work Hours and Safety Standards Act-Overtime Compensation; (2) Davis-Bacon Act; (3) Withholding of Funds; (4) Payrolls and Basic Records; (5) Apprentices and Trainees; (6) Compliance with Copeland Act Requirements; (7) Subcontracts (Labor Standards); (8) Contract Termination-Debarment; (9) Compliance with Davis-Bacon and Related Act Regulations; (10) Disputes Concerning Labor Standards; and (11) Certification of Eligibility.
- B. Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.
- C. No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

I-70 ANTI-KICKBACK PROCEDURES

- A. Definitions.
 - 1. "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
 - 2. "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - 3. "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

4. "Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.
 5. "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
 6. "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 7. "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.
 8. "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-
1. Providing or attempting to provide or offering to provide any kickback;
 2. Soliciting, accepting, or attempting to accept any kickback; or
 3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- C. 1. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph "B" of this clause in its own operations and direct business relationships.
2. When the Contractor has reasonable grounds to believe that a violation described in paragraph "B" of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

3. The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph "B" of this clause.
4. The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government/NAFI unless the Government/NAFI has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
5. The Contractor agrees to incorporate the substance of this clause, including subparagraph "C.5" but excepting subparagraph "C.1", in all subcontracts under this contract which exceed \$100,000.

I-71 PERFORMANCE AND PAYMENT BONDS

- A. Definitions. As used in this clause – "Original contract price" means the award price of the contract; or for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.
- B. Within ten (10) calendar days after the contractor receives notification of contract award, the Contractor shall obtain and submit to the Contracting Officer two (2) bonds (namely "Performance" and "Payment" Bonds, each with good and sufficient surety or sureties acceptable to the Fund.
- C. If the contractor, upon acceptance of its bid or proposal by the fund within the period specified for acceptance, fails to execute all contractual documents or give performance and payment bonds as required by the contract within the time specified, the Contracting Officer may terminate the contract for default.
- D. Navy regulation applicable to Nonappropriated funds require performance and payment bonds for any construction contract exceeding \$100,000 unless an applicable waiver applies. The Contractor shall furnish to the Fund a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A) within 10 days after award of contract before receiving a Notice to Proceed with the work or being allowed to start work. The Bonds shall include a statement that states that "The term United States of America, as set forth in this bond form shall mean the United States Nonappropriated Fund Instrumentality (herein after referred to as the Navy, Morale, Welfare, and Recreation Fund) which is a party to this contract." The penal sums of such bonds shall be as follows:

1. Performance Bonds (Standard Form 25): The penal sum of the performance bonds at the time of contract award shall be 100% of the original contract price.
 2. Payment Bonds (Standard Form 25A): The penal sum of the payment bonds at the time of contract award shall be 100% of the original contract price.
 3. Additional bond protection
 - a. The NAFI may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.
 - b. The NAFI may secure the additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- E. Corporate sureties offered for bonds furnished with your award contract must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies". Treasury Circular 570 is published in the Federal Register or may be obtained from the web site from the Department of the Treasury. The penal amount of the bond should not exceed the surety's underwriting limit, the bond will be acceptable only if (i) the amount which exceeds the specified limit is coinsured or reinsured and (ii) the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.
- F. Individual sureties will not be acceptable under the requirements of this contract.
- G. Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

I-72 RESERVED

I-73 STOP-WORK ORDER

- A. The contracting officer may, at any time, by written order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor

shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer shall either -

1. Cancel the stop-work order; or
 2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience, clause of this contract.
- B. If a stop-work order issued under this clause is cancelled or the period of the order any extension thereof expires, the contractor shall resume work. The contracting officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing. Accordingly, if -
1. The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
 2. The contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.
- C. If a stop-work order is not cancelled and the work covered by the order is terminated for the convenience of the NAFI, the contracting officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not cancelled and the work covered by the order is terminated for default, the contracting officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I-74 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

- A. The NAFI shall pay the contract price as provided in this contract.
- B. The NAFI may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount

included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site may also be taken into consideration if-

1. Consideration is specifically authorized by this contract; and
 2. The Contractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.
- C. Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph "C.4" from the certification, the certification is still acceptable.) I hereby certify, to the best of my knowledge and belief, that-
1. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 2. Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;
 3. This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
 4. This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)
(Title)
(Date)

- D. Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

1. Notify the Contracting Officer of such performance deficiency; and
 2. Be obligated to pay the NAFI an amount (computed by the Contracting Officer in the manner provided in paragraph "J" of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until-
 - a. The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
 - b. The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.
- E. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the NAFI and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.
- F. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the NAFI, but this shall not be construed as-
1. Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 2. Waiving the right of the NAFI to require the fulfillment of all of the terms of the contract.
- G. In making these progress payments, the NAFI shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

- H. The NAFI shall pay the amount due the Contractor under this contract after-
1. Completion and acceptance of all work;
 2. Presentation of a properly executed voucher; and
 3. Presentation of release of all claims against the NAFI arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the assignment of Claims clause of this contract.
- I. Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in BUPERSINST 7043.1B, including contract modifications for additional supplies, services or construction, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

I-75 PRECONSTRUCTION CONFERENCE

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

I-76 BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government/NAFI contract numbers and contracting offices for all Government/NAFI contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I-77 CONTRACTING OFFICER AUTHORITY

In no event shall any understanding or agreement between the Contractor and any Government/NAFI employee other than the Contracting Officer on any contract, modification, change order, letter or verbal direction to the Contractor be effective or binding upon the NAFI. All such actions must be formalized by a proper contractual document executed by an appointed Contracting Officer. The Contractor is hereby put on notice that in the event a Government/NAFI employee other than the Contracting Officer directs change in the work to be performed or increases the scope of work to be performed, it is the Contractor's responsibility to make inquiry of the Contracting Officer before making the deviation. Payments will not be made without being authorized by an appointed Contracting Officer with the legal authority to bind the NAFI.

I-78 ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (1) the Schedule (excluding the specifications), (2) Representations and Other Instructions, (3) Contract Clauses, (4) Section C – Specifications and Work Statement, (5) Other Documents, Exhibits and Attachments, and (6) the Contractor's technical proposal, if incorporated by reference elsewhere in the contract

I-79 NOT USED

I-80 NOT USED

I-81 NOT USE

I-82 NOT USED

I-83 PRIVACY ACT NOTIFICATION

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violations of the Act may involve the imposition of criminal penalties.

I-84 PRIVACY ACT

A. The Contractor agrees to-

- 1. Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-**

- a. The systems of records; and
 - b. The design, development, or operation work that the contractor is to perform;
 2. Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
 3. Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.
- B. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
- C. 1. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
2. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
3. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

END OF SECTION I